

16.09.2021
Sl. No.19
srm

W.P.A. No. 14015 of 2021
Smt. Mala Ghosh & Anr.
Vs.
The State of West Bengal & Ors.

Md. Sarwar Jahan,
Mr. Binay Shaw

...for the Petitioners.

Mr. Manas Kumar Kundu,
Mr. Debabrata Mondal (2)

...for the State-Respondents.

Mr. Bikash Kumar Chatterjee,
Mr. S. Bhatta

...for the Panihati Municipality.

Mr. Kushal Chatterjee,
Mr. Debabrata Roy

...for the Respondent No.9.

Affidavit of service is taken on record.

The writ petition has been filed alleging inaction on the part of the Panihati Municipality in proceeding with the demolition case, which was initiated pursuant to an order of this Court. The allegation is that the respondent No.9 has illegally and without any sanction plan constructed a G+4 multi-storied building at Premises No.138, Ward No.3, P.S. Khardah, Dag No.118/84, Khatian No.186, Mouza-Panihati.

Challenging such unauthorised construction, a writ petition was filed by the writ petitioners. The writ petition was registered as W.P. No.7256 (W) of 2016. The demolition order is at page 126 of the writ petition. The same was issued on August 29, 2016 by the Chairman, Panihati Municipality in

accordance with law. Challenging the said order, the respondent No.9 preferred a municipal appeal under Section 218(3) of the West Bengal Municipal Act, 1993. In the said appeal, the order of demolition was stayed. However, strangely the order of demolition was withdrawn by the concerned municipality and the order of demolition was cancelled. Such cancellation was communicated to the respondent No.9 on September 5, 2016. The appellate forum by an order dated December 9, 2016, stayed the order of demolition which was already withdrawn/cancelled by the municipality and when the demolition order was no more in operation. Notices have been issued by the municipality upon the respondent No.9, after such cancellation, directing the respondent No.9 to appear before the authorities for further hearing with regard to the demolition case. It appears that the respondent No.9 did not appear before the competent authority of the municipality and has not cooperated with the proceeding.

Mr. Chatterjee, learned Advocate appearing on behalf of the respondent No.9 points out to the communication dated September, 5, 2016 and submits that the municipal authority on the one hand cancelled the order of demolition and on the other hand once again directed them to remove the unauthorised structure.

The learned Advocate appearing on behalf of the Panihati Municipality submits that the building has been constructed unauthorisedly without any sanction plan and the signatures of the Board of Councillors have been forged. He further submits that the order of stay was not extended by the appellate forum.

Having considered the rival contentions of parties, this Court is of the opinion that at present there is no order of demolition. Demolition proceeding has to be started *de novo*. Accordingly, the writ petition is disposed of with a direction upon the competent authority of the Panihati Municipality, which is now under the Board of Administrators, to proceed afresh in accordance with by initiating a proceeding under Section 218 of the West Bengal Municipal Act, 1993.

It is made clear that the authority concerned shall issue notices to both the parties and make inspection in presence of the parties and give a hearing to all. The authority shall also be entitled to take such interim measures as may be necessary to ensure that the unauthorised and illegal construction does not take place. A reasoned order shall be passed and communicated to all concerned. The municipality shall act and proceed in accordance with law based on what transpires during the inspection and at the hearing.

The entire exercise shall be completed within a period of three months from the date of communication of this order.

This writ petition is, thus, disposed of.

There will be no order as to costs.

All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)